

§ 390.74

12 CFR Ch. III (1–14 Edition)

(g) *Deposition subpoenas.* (1) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena must serve it on the person named therein or upon that person's counsel, by any of the methods identified in § 390.40(d). The party serving the subpoena must file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 390.56(d).

§ 390.74 Civil money penalties.

(a) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Board of Directors finds that any of the grounds specified in the notice issued pursuant to § 390.47 have been established, the Executive Secretary may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Board of Directors or by a reviewing court.

(b) *Payment.* (1) Civil penalties assessed pursuant to §§ 390.30 through 390.75 are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Board of Directors fixes a different time for

payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Board of Directors has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Board of Directors fixes a different time for payment. Notwithstanding the foregoing, the FDIC may seek to attach the party's assets or to have a receiver appointed to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) [Reserved]

[76 FR 47655, Aug. 5, 2011, as amended at 77 FR 75479, Dec. 17, 2012]

§ 390.75 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 390.68 shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge and an additional copy shall be filed with the Executive Secretary, who receives adjudicatory filings; provided, however, that once the administrative law judge has certified the record to the Executive Secretary pursuant to § 390.67, all motions must be filed with the Board of Directors, to the attention of the Executive Secretary, within the 10-day period following the filing of exceptions allowed for the filing of replies to exceptions. Responses to such motions filed in a timely manner with the Board of Directors, other than motions for oral argument before the Board of Directors, shall be allowed pursuant to the procedures at § 390.52(d). No response is required for the Board of Directors to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 390.34, the administrative law judge